

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Dan OZ
Assignee: Stryker GI Ltd
Serial No.: 10/527,249
Filed: March 9, 2005
Title: Piston Actuated Endoscopic Tool
Attorney Docket: 415/15
Confirmation No.: 2837

Petition To Revive Under 37 C.F.R.1.137(a)

Pursuant to the provisions of 37 C.F.R. 1.137(a), Applicant hereby petitions for revival of an “unavoidable” abandonment. As the abandonment was caused by an error of the PTO, no fee should be required for this Petition.

This Petition is in response to the December 18, 2007 Notification of Abandonment. Prior to receipt of this paper, Applicant had no reason to think this application was abandoned. On October 19, 2006 the PTO published the application, on August 24, 2006, the PTO issued a first action prediction letter, on July 13, 2006 the PTO issued a Notice Of New Projected Publication Date, and on July 6, 2006 it was “Cleared by OIPE CSR,” so it is self-apparent the PTO was treating this application as an active application and that it was not being treated as an abandoned application.

Moreover, the August 12, 2005 Notification Of Missing Requirements is factually incorrect and no additional filing fees of any type were required.

The Notification refers to \$980 for extra claim fees, but this application was filed and published with only 19 claims. It had only 3 independent claims and there were no multiple dependent claims. Therefore, no fees for extra claims were required at all. In this regard, the Notification was in error.

As per the second page of the Transmittal letter (PTO-1390), the Examination fee was \$100 since the US PTO issued the International Search Report. Further since the PTO acknowledges receipt of the filing fee and since one check was submitted for all fees, it is self-apparent that the PTO also received the examination fee. The internal PTO document WFEE shows the total fee due as \$250, which is what is shown on the Transmittal Letter. Further, the internal PTO document IMIS of March 9, 2005 states that "National application base fee paid." Therefore, there was no deficiency in the examination fee and it was error for the Notification to say no examination fee was paid.

Therefore, since the August 12, 2005 Notification Of Missing Requirements was entirely incorrect in its demand for additional fees and in point of fact all required fees had been paid, there was no basis for abandonment.

Accordingly, Applicant respectfully requests that the application immediately be revived.

Dated: December 25, 2007

Respectfully submitted,
Lilling & Lilling PLLC

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